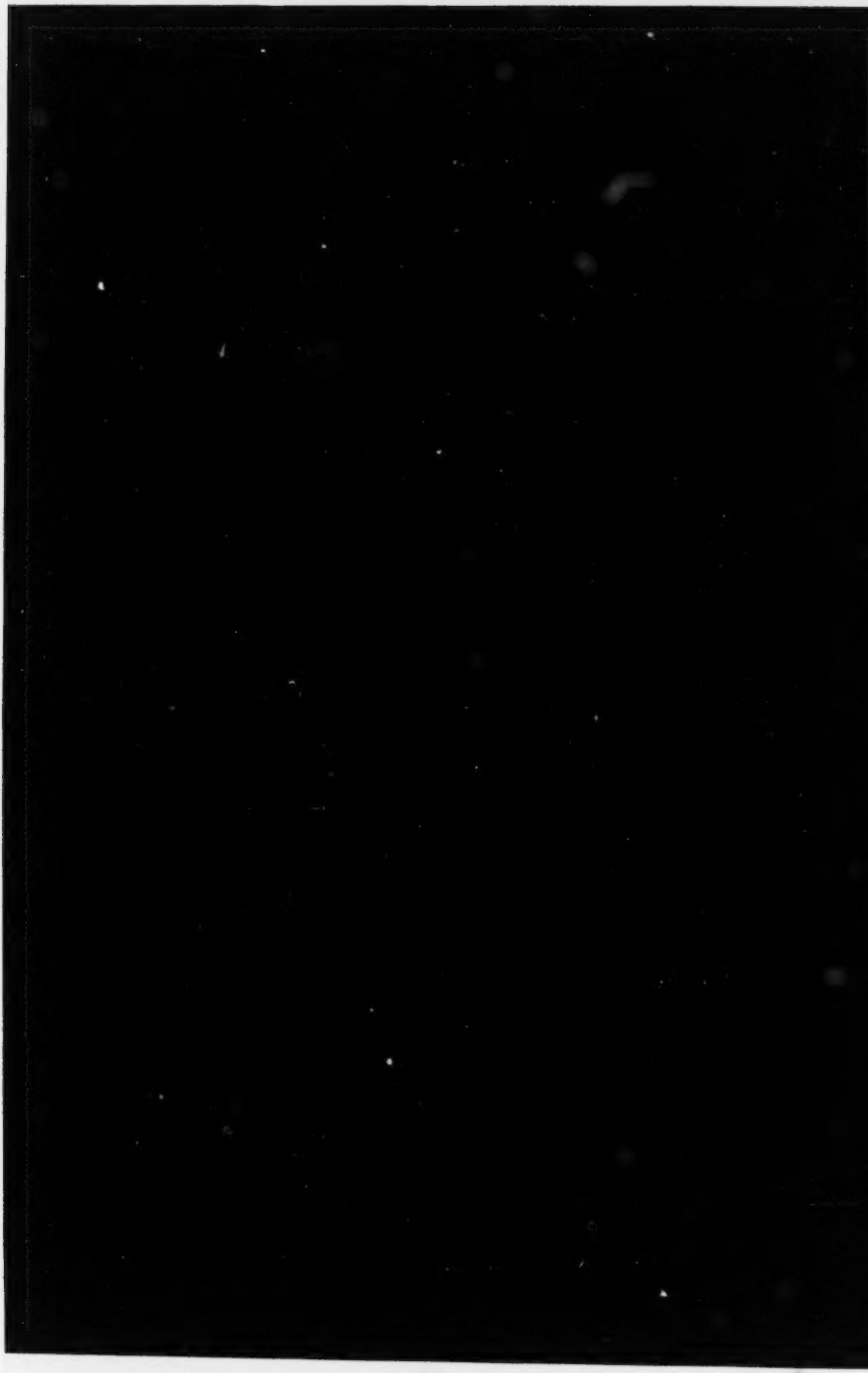


INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	6
Conclusion	13

CITATIONS

Cases:	
Aguilar v. *Standard Oil Co.*, 318 U. S. 724	6, 8, 9
Atkinson v. *Corriher Mills*, 201 N. C. 5, 158 S. E. 554	11
Californian, The, 124 Fed. 99	10
Carson v. *Dierks Lumber & Coal Co.*, 196 Ark. 163, 117 S. W. 2d 39	11
De Zon v. *Amer. President Lines*, 318 U. S. 660	7, 8, 13
Dravo Corporation v. *Copeland*, 190 Miss. 269, 199 So. 769	11
Emerson's Estate, In re, 191 Ia. 1386, 182 N. W. 376	11
Holgate v. *Chrysler Corporation*, 279 Mich. 24, 271 N. W. 539	11
Jamison v. *Encarnacion*, 281 U. S. 635	12
Koehler v. *Presque-Isle Transp. Co.*, 141 F. 2d 490	12
Kyriakos v. *Goulandris*, 151 F. 2d 132	12
Lemon v. *United States*, 68 F. Supp. 793	10, 11
Marceau v. *Great Lakes Transportation Corp.*, 146 F. 2d 416	10
Neely v. *Goldberg*, 195 Ark. 790, 114 S. W. 2d 455	11
O'Donnell v. *Great Lakes Co.*, 318 U. S. 36	6, 8, 9
Pacific Co. v. *Peterson*, 278 U. S. 130	8
Patrick v. *Atlas Knitting Co.*, 164 App. Div. (N. Y.) 753, 149 N. Y. S. 845	11
Pfiester's Adm'r v. *Jones*, 291 Ky. 151, 163 S. W. 2d 304	11
Small v. *Ralston-Purina Co.*, 202 S. W. 2d 533 (Mo. App.)	11
Todahl v. *Sudden & Christensen*, 5 F. 2d 462	11
Toyo Kisen Kaisha v. *Hartman*, 253 Fed. 422	10
Walton v. *Continental S. S. Co.*, 66 F. Supp. 836	11
Wheeler v. *West India S. S. Co.*, 103 F. Supp. 631, affirmed *per curiam*, 205 F. 2d 354	10, 11, 12
Statutes:	
Federal Employers' Liability Act, 35 Stat. 65, 45 U. S. C. 51 *et seq.*, Section 1	3, 8
Jones Act, (Section 33 of the Merchant Marine Act of 1920), 41 Stat. 1007, 46 U. S. C. 688	2, 4, 7
Suits in Admiralty Act, 41 Stat. 525, 16 U. S. C. 742, Section 2	3, 4

276547—53

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 376

BERT WILBUR PAUL, PETITIONER

v.

UNITED STATES OF AMERICA, UNITED STATES MARITIME COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 11a–17a) is reported at 101 F. Supp. 89. The opinion of the United States Court of Appeals for the Third Circuit (R. 20–30) is reported at 205 F. 2d 38.

JURISDICTION

The judgment of the Court of Appeals was entered on June 8, 1953 (R. 31). A petition for rehearing was denied on June 29, 1953 (R. 32). The petition for a writ of certiorari was filed on

September 25, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, for purposes of liability under the Jones Act, a shipowner's duty to a seaman to provide safe egress from ship to shore includes the area beyond the confines of the ship and extending to the public street, over which area the shipowner has no dominion or control.

STATUTES INVOLVED

The Jones Act (Section 33 of the Merchant Marine Act of 1920), 41 Stat. 1007, 46 U. S. C. 688, provides in pertinent part as follows:

> That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. * * *

The scope of an employer's liability under the Jones Act is defined in Section 1 of the Federal Employers' Liability Act, 35 Stat. 65, 45 U. S. C. 51, which provides in pertinent part as follows:

> That every common carrier by railroad while engaging in commerce * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, * * * for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, * * *

Section 2 of the Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. 742, provides in part as follows:

> That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. * * *

STATEMENT

For personal injuries sustained while on shore leave in the port of Brindisi, Italy, Bert Wilbur Paul filed a libel *in personam* in the United States

District Court for the Eastern District of Pennsylvania against the United States and the United States Maritime Commission, owners and operators of the SS. *William Moultrie*. As a first cause of action (R. 2a–4a), Paul alleged that his injuries were the consequence of the negligence of the United States for which he sought damages under the Jones Act.[1] The second cause of action (R. 4a–5a) was a claim for maintenance and cure covering the disability period. This aspect of the case was settled before trial in the District Court leaving only the action for damages which was submitted to and decided by the District Court upon stipulated facts (R. 11a–13a).

In substance, the facts, as stipulated, are as follows (R. 11a–13a): Paul joined the SS. *William Moultrie* as Chief Engineer on March 19, 1946. The vessel, owned and operated by the United States, arrived at the Port of Brindisi, Italy, on the morning of May 6, 1946, at which time it was moored to a long dock constructed parallel to the shore line. The dock with its walkway and appurtenances was owned by the Italian government and, along with the port itself, was then under the control of the British military authorities. Parallel to the water line and running the length of the dock was a rail-

[1] Section 33 of the Merchant Marine Act of 1920, 41 Stat. 1007, 46 U. S. C. 688, *supra* p. 2, made applicable to the United States by Section 2 of the Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. 742, *supra* p. 3.

road track and alongside this track, raised three or four steps above it, was a cement walkway or platform six or seven feet wide and several hundred feet in length which provided the means of egress from the vessels moored at the dock. The walkway was sheltered by a V-shaped roof, but had no railings and was unlighted.

On the day of arrival at the port, Paul went ashore during the daylight hours, on which occasion he elected to walk along the railroad track rather than to use the walkway. After dark on the following evening (May 7, 1946), Paul again left the ship on shore leave; on this occasion, he ascended to the walkway and walked along it to a point approximately 100 feet beyond the bow of the ship. At that point he fell into an unguarded and unlighted hole about 2½ feet square and 4½ feet deep, resulting in the injuries complained of in the libel. The depression was a permanent part of the dock structure containing shunting gear used in switching operations of the railroad track. No notice of its presence had been given to Paul by the ship's officers or crew.[2]

Upon these facts, the District Court concluded (R. 17a) that the injuries sustained by Paul were not caused by the negligence of the United States; judgment in favor of the United States was ac-

[2] The stipulation is silent as to whether government agents actually knew of the presence of the hole.

cordingly entered and the libel dismissed (R. 18a).

The Court of Appeals affirmed, Judge Biggs dissenting (R. 20–31), rejecting (as the District Court had previously done) the contentions (1) that the shipowner's duty to provide safe egress from the vessel continued until a seaman reaches the public highway and (2) that, in the circumstances of this case, the United States was under a duty to inspect, detect, and warn Paul of the presence of the depression in the cement walkway which had caused his injuries.

ARGUMENT

The decision of the Court of Appeals rests neither upon the fact that the injuries sustained by this petitioner occurred on land (*O'Donnell* v. *Great Lakes Co.*, 318 U. S. 36) nor upon the fact that the injuries were sustained at a time when this petitioner was on shore leave (*Aguilar* v. *Standard Oil Co.*, 318 U. S. 724) (Pet. 9–17). Neither may the result be fairly said to rest upon a misrepresentation of the rationale of *Aguilar* v. *Standard Oil Co., supra,* nor a misconstruction of the language of this Court in that case (Pet. 17–19). Rather, it rests upon a determination that, in the circumstances of this case, the United States did not owe petitioner any duty and was therefore not negligent; accordingly, there was no basis for liability under the Jones Act, which requires proof of fault or

negligence. *De Zon* v. *Amer. President Lines,* 318 U. S. 660.

Both the District Court and the Court of Appeals, after detailed discussion and analysis of relevant authorities, reached the conclusion that, for purposes of an action for damages brought under the Jones Act, a shipowner's duty to a seaman to provide a safe means of egress from ship to shore did not extend to physical facilities beyond the confines of the ship and its appurtenances and into an area beyond the ship over which no dominion or control was or could be exerted by the shipowner. This negative determination of the only question before the court comports with the maritime law and accords with established common law concepts of negligence as applied to master-servant relationships. There is no conflict of decisions and petitioner points to nothing which calls for further review by this Court at this time.

1. With the settlement of the claim for maintenance and cure and the abandonment of the allegation of the unseaworthiness of the vessel (R. 4a), petitioner's only remaining remedy is that afforded by the Jones Act (§ 33 of the Merchant Marine Act of 1920, 46 U. S. C. 688, *supra,* p. 2). The Jones Act gives to seamen injured in the course of their employment the right, at their election, to maintain an action for damages in a manner similar to that theretofore afforded

railway employees by the Federal Employers' Liability Act.[8] Incorporating by reference the provisions of the F. E. L. A., the test of a shipowner's liability is the "negligence of any of the officers, agents, or employees of such carrier" and in this respect is significantly distinct from a seaman's right to maintenance and cure for injuries or illness sustained in the course of a voyage (see *De Zon* v. *American President Lines,* 318 U. S. 660, 671–672).

The liability for maintenance and cure is completely independent of any fault or negligence on the part of the ship's owner or his agents; it is a time-honored right arising as an incident of the marine employer-employee relationship, stemming from the "unique hazards, emphasized by unusual tenure and control [which] attend the work of seamen" (*Aguilar* v. *Standard Oil Co.,* 318 U. S. 724, 727). With the exception of injuries attributable to the unseaworthiness of the vessel for which a seaman had a right to compensatory damages (see *Pacific Co.* v. *Peterson,* 278 U. S. 130), prior to the Jones Act the right to maintenance and cure constituted a seaman's only remedy against either the ship or its owner (*O'Donnell* v. *Great Lakes Co.,* 318 U. S. 36, 43).

In this case, although maintenance and cure and unseaworthiness are no longer in the litiga-

[8] 35 Stat. 65, 45 U. S. C. 51 *et seq.*

tion, petitioner, relying upon the same considerations as those underlying the right to maintenance and cure, seeks to extend the liability of a shipowner under the Jones Act by what the court below characterized as "nothing less than judicial legislation" (R. 29). The extension of liability proposed in the court below and urged in the petition here appears in the guise of an heretofore unknown duty which petitioner would impose upon the shipowner to provide safe egress to a seaman, not from the ship to shore, but from the shore to the public highway. A corollary to this duty, it is contended, is the duty of the shipowner to discover and warn against any and all hazards which might conceivably be encountered between the shore and the public highway.

No authority is or can be cited for the proposition urged; instead, the petition quotes at length (Pet. 11–12) from *Aguilar* v. *Standard Oil Co.*, 318 U. S. 324, where this Court considered the question of a shipowner's obligation to provide maintenance and cure to a seaman injured while on shore leave, an issue which was, of course, removed from this case prior to trial. The decision below is in no sense of the word at variance with the result in the *Aguilar* case where the negligence of the shipowner was not in any way involved and no intent on the part of this Court to enlarge a shipowner's liability under the Jones

Act may be gleaned from the opinion, however it may be read.[4]

Similarly, since there was no dispute as to whether petitioner was in the course of his employment at the time the injuries were sustained, the aspect of the *Aguilar* case is totally inapposite to the present question.[5] Likewise irrelevant is *O'Donnell* v. *Great Lakes Co., supra,* where the remedy afforded by the Jones Act was held available to a seaman injured through the negligence of his employer while working ashore.[6] As we have pointed out (*supra,* p. 6), recovery in this case was not denied merely because petitioner was injured while ashore.

2. Properly distinguishing between a seaman's right to maintenance and cure and the right of action afforded by the Jones Act, the court below, as did the District Court, correctly concluded that there was no duty on the part of a shipowner to inspect a dock area and all avenues of approach to a ship, under the ownership and control of third persons, and to give warning of any hazards before granting shore leave to crew

---

[4] See *Lemon* v. *United States*, 68 F. Supp. 793 (D. Md.); *Wheeler* v. *West India S. S. Co.*, 103 F. Supp. 631, 634 (S. D. N. Y.), affirmed *per curiam* on the opinion below, 205 F. 2d 354 (C. A. 2).

[5] Cf. *The Californian*, 124 Fed. 99 (E. D. N. Y.); *Toyo Kisen Kaisha* v. *Hartman*, 253 Fed. 422 (C. A. 9).

[6] See also *Marceau* v. *Great Lakes Transportation Corp.*, 146 F. 2d 416, 418 (C. A. 2).

members.' This conclusion represents but an application to the facts at hand of an established rule of negligence law—that the employer owes no duty to his employees to see that the public approaches to the place of employment are safe.[8] It is not qualified even inferentially by *Patrick* v. *Atlas Knitting Co.*, 164 App. Div. (N. Y.) 753, 149 N. Y. S. 845 (cited at Pet. 15), where a manufactory was so situated that, unlike the present case, no established walkway existed and the only means of egress from the plant to the public street compelled employees to cross a wholly unprotected and unguarded railroad track by reason of which situation a duty was held to devolve upon the employer to exercise due care for the safety of his employees in leaving and coming to his plant.

Petitioner harps on the special relationship of the seaman to the shipowner and to the ad-

---

[7] See, to the same effect, *Wheeler* v. *West India S. S. Co.*, 103 F. Supp. 631, 634, affirmed *per curiam* on the opinion below, 205 F. 2d 354 (C. A. 2); cf. *Todahl* v. *Sudden & Christensen*, 5 F. 2d 462 (C. A. 9); *Walton* v. *Continental S. S. Co.*, 66 F. Supp. 836 (D. Md.); *Lemon* v. *United States*, 68 F. Supp. 793 (D. Md.).

[8] *Small* v. *Ralston-Purina Co.*, 202 S. W. 2d 533, 537 (Mo. App.); *Neely* v. *Goldberg*, 195 Ark. 790, 114 S. W. 2d 455; cf. *Carson* v. *Dierks Lumber & Coal Co.*, 196 Ark. 163, 117 S. W. 2d 39; *Pfiester's Adm'r* v. *Jones*, 291 Ky. 151, 163 S. W. 2d 304; *Dravo Corporation* v. *Copeland*, 190 Miss. 269, 199 So. 769; *Atkinson* v. *Corriher Mills*, 201 N. C. 5, 158 S. E. 554; *Holgate* v. *Chrysler Corporation*, 279 Mich. 24, 271 N. W. 539; *In re Emerson's Estate*, 191 Ia. 1386, 182 N. W. 376.

miralty courts as support for an expansion of liability to the present case. But the demands of that special relationship are fulfilled by the maintenance and cure provisions of the general maritime law. The Jones Act remedy for negligence was intended to do no more than to endow seamen with the normal rights incident to the ordinary employer-employee relationship. See *Wheeler* v. *West India S. S. Co.*, 103 F. Supp. 631, 634 (S. D. N. Y.), affirmed *per curiam* on the opinion below, 205 F. 2d 354 (C. A. 2).

In the courts below, petitioner cited (see R. 15a, 15b, 24) instances in which recovery under the Jones Act has been allowed where the injuries sustained were the consequence of physical assaults by fellow crewmen or ship's officers. See *Jamison* v. *Encarnacion*, 281 U. S. 635; *Koehler* v. *Presque-Isle Transp. Co.*, 141 F. 2d 490 (C. A. 2); *Kyriakos* v. *Goulandris*, 151 F. 2d 132 (C. A. 2).[9] But the reference to these cases ignores the fact that the negligence there complained of consisted of physical acts of violence inflicted by fellow crewmen whose pugnacious temperament should have been known to the common employer. While supporting the proposition that the term "negligence", as the test of liability under the Jones Act, is to be liberally construed, such cases hardly warrant the conclusion that established

[9] The petition here does not seem to rely on this line of cases.

concepts of the scope of an employer's duty of due care are thereby abandoned.[10]

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ROBERT L. STERN,
Acting Solicitor General.
WARREN E. BURGER,
Assistant Attorney General.
SAMUEL D. SLADE,
JOHN G. LAUGHLIN,
Attorneys.

OCTOBER 1953.

---

[10] "But damages may be recovered under the Jones Act only for negligence. *Jamison* v. *Encarnacion*, * * *. Whether the legislative policy of compensating only on the basis of proven fault is wise is not for us to say, nor is it our function to circumvent it by reading into the law a theory, however disguised, that a physician who undertakes care guarantees cure, and that each unsuccessful effort of the physician may be visited with a successful malpractice suit." *De Zon* v. *Amer. President Lines*, 318 U. S. 660, 671–672.

U. S. GOVERNMENT PRINTING OFFICE: 1953